

CHAPTER 69
LOAN AND CREDIT GUARANTEE PROGRAM

261—69.1(15E,81GA,HF868) Purpose. The purpose of the loan and credit guarantee program is to create incentives and assistance to increase the flow of private capital to targeted industry businesses, microenterprises, and other qualified businesses, to promote industrial modernization and technology adoption, to encourage the retention and creation of jobs, and to encourage the export of goods and services sold by Iowa businesses in national and international markets. The department may invest up to 10 percent of the assets of the loan and credit guarantee fund or \$500,000, whichever is higher, to provide assistance to microenterprises.

261—69.2(15E,81GA,HF868) Definitions.

“Act” means Iowa Code sections 15E.221 to 15E.227 as amended by 2005 Iowa Acts, House File 868.

“Board” or *“IDED board”* means the Iowa economic development board established in Iowa Code section 15.103 as amended by 2005 Iowa Acts, House File 868, section 4, and composed of 15 voting members and 7 ex officio nonvoting members.

“Committee” means the loan and credit guarantee committee described in 261—subrule 1.3(4) and created by the board to review applications requesting assistance from the loan and credit guarantee program and make funding recommendations to the board.

“Department” or *“IDED”* means the Iowa department of economic development.

“Financial institution” means a state bank as defined in Iowa Code section 524.103, subsection 33, a state bank chartered under the laws of any other state, a national banking association, a trust company, a federally chartered savings and loan association, an out-of-state state-chartered savings bank, a financial institution chartered by the federal home loan bank board, a non-Iowa chartered savings and loan association, an association incorporated or authorized to do business under Iowa Code chapter 534, or a production credit association or such other financial institution as defined by the department for purposes of this chapter.

“Microenterprise” means a business providing services with five or fewer full-time equivalent employee positions, and located in a municipality with a population under 50,000 that is not contiguous to a municipality with a population of 50,000 or more.

“Program” means the loan and credit guarantee program established in the Act.

“Qualified business” means an existing or proposed business entity with an annual average number of employees not exceeding 200 employees. “Qualified business” does not include businesses engaged primarily in retail sales, real estate, or the provision of health care or other professional services. “Qualified business” includes professional services businesses that provide services to targeted industry businesses or other entities. To be considered a qualified business, a professional services business must derive a majority of its revenue from targeted industry businesses.

“Targeted industry business” means an existing or proposed business entity, including an emerging small business or qualified business which is operated for profit and which has a primary business purpose of doing business in at least one of the targeted industries designated by the department, which include life sciences, software and information technology, advanced manufacturing, value-added agriculture, and any other industry designated as a targeted industry by the board.

261—69.3(15E,81GA,HF868) Application and review process. The department, with the advice of the loan and credit guarantee committee, shall develop and make available a standardized application pertaining to the issuance of loan and credit guarantees. Subject to the availability of funds, the loan and credit guarantee committee will review applications and make recommendations to the board pertaining to the approval of loan and credit guarantee awards.

69.3(1) Each participating financial institution shall identify and underwrite potential lending opportunities with qualified businesses, microenterprises, and targeted industry businesses. Upon determination by the financial institution that the business meets the financial institution's underwriting criteria, subject to the approval of a loan and credit guarantee, the financial institution shall submit a loan and credit guarantee application and the underwriting information to the department.

69.3(2) It shall be the responsibility of the financial institution and the qualified business, microenterprise, or targeted industry business to submit a complete application. The department shall determine when an application is complete. Once the department has determined that an application is complete, the committee and the board shall consider the application as expeditiously as possible.

69.3(3) The department may develop an application procedure to allow a qualified business, microenterprise, or targeted industry business to apply directly to the department for a preliminary guarantee determination. A preliminary guarantee determination may be issued by the department, following board approval, subject to the qualified business's, microenterprise's, or targeted industry business's securing a commitment for financing from a financial institution.

261—69.4(15E,81GA,HF868) Application approval or rejection. Upon approval of an application, the department shall issue a loan and credit guarantee agreement with a financial institution outlining the terms and conditions upon which the loan will be guaranteed.

69.4(1) No guarantee shall become effective until the required fees have been paid. Such payment, along with an executed loan authorization, shall indicate the financial institution's acceptance of the terms of the loan authorization.

69.4(2) In the event the board rejects an application, the financial institution and the borrower will be sent notice, including reasons for the rejection.

261—69.5(15E,81GA,HF868) Terms and conditions. A loan and credit guarantee provided to a financial institution for a qualified business, microenterprise, or targeted industry business shall not exceed \$1 million. Loan and credit guarantees provided under the program to more than one financial institution for a single qualified business, microenterprise, or targeted industry business shall not exceed \$10 million. A single qualified business, microenterprise, or targeted industry business may have multiple guarantees with multiple financial institutions. The aggregate amount of loan or credit guarantees provided to financial institutions for any single qualified business, microenterprise, or targeted industry business shall not exceed \$10 million.

69.5(1) A loan and credit guarantee provided under the program shall be for eligible project costs. Eligible project costs include expenditures for production equipment and machinery, land and real estate, working capital for operations and export transactions, research and development, marketing, engineering and architectural fees, and such other costs as the department may designate.

69.5(2) The loan and credit guarantee provided under the program shall be negotiated on a case-by-case basis and in no case shall exceed more than 50 percent of the amount to be loaned to the qualified business, microenterprise, or targeted industry business by the financial institution for the project as described in the loan and credit guarantee application.

69.5(3) Interest rate and term of the loan to be secured shall be agreed upon between the financial institution and the borrower, provided that no guarantee exceeds 15 years.

69.5(4) Repayment of a guaranteed loan shall be secured by such collateral as the department deems prudent.

69.5(5) The covenants and requirements of the loan shall be established by the financial institution and department in accordance with prudent lending practices.

261—69.6(15E,81GA,HF868) Administrative costs and program fees. The department shall establish fees for participation in the loan and credit guarantee program.

69.6(1) The department shall charge a nonrefundable application fee for a loan and credit guarantee. The department shall set the application fee annually and include the fee information in the application materials for the loan and credit guarantee program. This fee will be payable upon submission of an application for a loan and credit guarantee from a financial institution or a qualified business, microenterprise, or targeted industry business and shall not exceed \$1,000.

69.6(2) Upon the approval of a loan and credit guarantee application, the department shall charge a fee for authorization of the loan or credit guarantee. The fee shall be 2.5 percent of the amount of funds to be guaranteed under the program. No loan and credit guarantee agreement will be executed until the fee is received by the department.

69.6(3) For a line of credit, the authorization fee shall be one-half percent per year renewable annually for a period not to exceed five years. The guarantee will automatically expire if the fee is not submitted upon renewal of the line of credit.

261—69.7(15E,81GA,HF868) Administration of guarantees. A preliminary commitment issued by the department shall be effective for 90 days from the date of issuance. If the contingencies outlined in the preliminary commitment are not met within 90 days, the preliminary commitment will be void.

69.7(1) A loan and credit guarantee agreement shall be executed between a financial institution, the borrower and the department. These rules and applicable state laws and regulations shall be part of the agreement. The loan and credit guarantee agreement shall include, but is not limited to, the following:

a. Provisions setting forth the responsibilities of the financial institution to prudently underwrite and service insured loans in such a manner as would be the normal and customary practice of a prudent lender making or servicing a loan.

b. A requirement that the financial institution notify the department in writing within 5 business days after a borrower's payment is 30 days late and within 15 business days of any other default or event or condition which indicates the loan may be difficult to collect in full. Upon default of the loan, the financial institution, in consultation with the department, shall take such action as may be prudent, including foreclosing on and liquidating collateral.

c. The department may, at its discretion, cancel or reduce a loan or credit guarantee if the financial institution demonstrates instances of fraud or gross malfeasance under the loan and credit guarantee agreement.

d. Awards may be conditioned upon commitment of other sources of funds necessary to complete the project or upon other matters as determined appropriate by the department.

69.7(2) The financial institution and borrower must execute and return the loan and credit guarantee agreement to the department within the time period specified by the department in the agreement. Failure to do so may be cause for the department to terminate the loan and credit guarantee.

69.7(3) Any substantive change to a loan and credit guarantee agreement, such as time extensions, budget revisions and significant alteration of the funded project that change the scope, location, objectives or scale of the approved project or changes in terms of credit, shall be considered a request for an amendment. Amendments must be requested in writing by the financial institution. Amendments are not considered valid until approved by the committee and the department and confirmed in writing by IDED following the procedure specified in the contract between the recipient and IDED.

69.7(4) Financial institutions shall comply with these rules, with any provisions of the Iowa Code governing activities performed under this program and with applicable local regulations.

These rules are intended to implement Iowa Code sections 15E.221 to 15E.227 and 2003 Iowa Acts, First Extraordinary Session, chapter 2, section 69, and 2005 Iowa Acts, House File 868.

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CHAPTERS 70 to 100

Reserved